

Appln. S.N. 10/697,615
Prelim. Amdt. dated March 2, 2006 with RCE
Docket No. 10010217-3

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REMARKS

Entry of this Preliminary Amendment before continued examination of the instant application is respectfully requested. Upon entry of this Amendment, claims 1-7, 10-14, 16-25, 27, 30, 32-52 and 54-57 remain in the application. Claims 15, 26 and 53 are cancelled without prejudice. Reconsideration of the claims as revised is respectfully requested.

Claims 1-7, 10, 12, 13, 15, 19-26, 30, 32-34, 43-46, 48-53, 56 and 57 stood rejected (in the Final Office Action of dated January 9, 2006) under 35 U.S.C. 102(e) as being anticipated by Klimowicz et al. (U.S. Patent 6,543,443). The Examiner states that Klimowicz teaches an applicator for delivering two or more different bioactive compositions. The Examiner asserts that Klimowicz teaches all of the elements as recited in Applicants' claims, including an inkjet dispenser.

Applicants respectfully disagree with the Examiner's assertion that Klimowicz teaches an inkjet dispenser. Klimowicz teaches two different nebulizers having holes therein to dispense fluids. In sharp contrast, Applicants' invention as defined in the claims includes an inkjet dispenser having multiple fluid ejection heads, each of which dispenses a different fluid using inkjet technology.

Furthermore, Applicants' independent claims include an "electronic programmable controller" or a step of "electronically programming the controller." The controller may be programmed by a user, so the dispensed ratio of one composition to another composition may be adjusted. Support for these recitations may be found in the specification as filed, at least at paragraphs 26, 51 and 55, and in the claims as filed.

The control system taught in Klimowicz is for controlling the nebulizing elements or for instructing the user on use of the device (see Col. 4, lines 10-11). The Klimowicz control system includes sensors or indicators for alerting the user when and/or how to use the device. Klimowicz does not suggest or teach that the dispenser may be electronically programmed for dispensing a ratio of compositions.

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For all the reasons stated above, it is submitted that Applicants' invention as defined in claims 1, 19, 33, 43, 49, 50, and those claims depending therefrom, is not anticipated, taught or rendered obvious by Klimowicz either alone or in combination, and patentably defines over the art of record.

Claims 1-7, 10-16, 19-27, 30, 32-36 and 43-48 stand rejected (in the Final Office Action of dated January 9, 2006) under 35 U.S.C. 103(a) as being unpatentable over Voges (U.S. Patent 5,894,841) in view of Behar et al (U.S. Patent 5,169,029). The Examiner states that Voges teaches an applicator for delivering a bioactive composition using an inkjet dispenser and the other elements as recited in Applicants' claims. The Examiner admits that Voges fails to teach multiple fluid reservoirs configured to simultaneously deliver the bioactive compositions. The Examiner asserts that Behar teaches a common inhaler having multiple replaceable reservoirs for administering medication. The Examiner concludes that it would have been obvious to modify the inhaler of Voges to include the fluid reservoirs of Behar for discharging medicaments.

Applicants do not agree that the skilled artisan would be led to combine Voges and Behar. It is submitted that, to successfully combine the teachings of Voges and Behar, it would require substantial reconstruction and redesign (see *In re Ratti*, 270 F.2d 810, 813 (CCPA 1959)). Voges teaches an electronic device and Behar teaches a purely mechanical device. To incorporate the teachings of Behar into Voges would require one to determine (likely with extensive experimentation) how to redesign the mechanical design (of Behar) to at least be an electromechanical, if not electrical version. Furthermore, it is submitted that such a combination would alter the basic principles under which Voges and Behar are designed to operate.

However, assuming *arguendo* that one skilled in the art would be led to combine the teachings of Voges and Behar, it is submitted that Applicants' invention as defined in the claims would not be rendered obvious. Voges teaches an inhaler with a single reservoir which dispenses medicine via an inkjet dispenser. Behar teaches a multi-reservoir device for mixing medicaments (in a chamber or a single duct) prior to them being dispensed from the device. While one skilled in the art may use an inkjet

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dispenser as taught in Voges, it is submitted that one skilled in the art would not incorporate an inkjet dispenser having multiple ejector heads. The combined teaching of Voges and Behar would have the fluids in the same mixing chamber or duct prior to dispensing. As such, it is submitted that multiple ejector heads would not be contemplated or desirable.

Furthermore, Applicants respectfully submit that neither Voges nor Behar teach that an electronic controller is configurable to adjust the dispensed ratio of one bioactive composition to another bioactive composition. Behar teaches that the amounts of dispensed components may be pre-selected by controlling the internal diameters of the pumps during formation of the device, and prior to operation by a user. Voges teaches controlling the dose of a single composition, not adjusting the ratio of one composition to another composition.

For all the reasons stated above, it is submitted that Applicants' invention as defined in claims 1, 19, 33, 43 and those claims depending therefrom, is not anticipated, taught or rendered obvious by Voges in view of Behar, and patentably defines over the art of record.

Claims 17, 18, 37-42, 54 and 55 stand rejected (in the Final Office Action of dated January 9, 2006) as being unpatentable over Klimowicz in view of McKinnon et al. (U.S. Patent 6,190,326). The Examiner reiterates the arguments regarding Klimowicz, but notes that Klimowicz fails to teach that the controller is programmable from a remote computer or a keypad mounted on an external surface. The Examiner states the McKinnon teaches a common controller for accurately collecting information about a patient's respirator condition. The Examiner concludes that it would have been obvious to modify the controller of Klimowicz to include the remote computer and keypad to allow entry of the specifics of a treatment plan of a physician.

Applicants respectfully submit that neither Klimowicz nor McKinnon teach a programmable device configurable to adjust the dispensed ratio of one composition with respect to the other composition. Applicants reiterate the above arguments regarding the control system taught in Klimowicz.

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Furthermore, Applicants point out that McKinnon teaches a device for collecting information from a patient inhaler. McKinnon also teaches altering a treatment plan and updating the collecting device based on the information collected. McKinnon does not teach, nor does he suggest that the inhaler may be controlled or programmed via his device. More specifically, McKinnon does not teach that a ratio of compositions dispensed from the inhaler may be controlled via the device.

For all the reasons stated above, it is submitted that Applicants' invention as defined in claims 17, 18, 37-42, 54 and 55 is not anticipated, taught or rendered obvious by Klimowicz in view of McKinnon, and patentably defines over the art of record.

Claims 17, 18 and 37-42 stand rejected (in the Final Office Action of dated January 9, 2006) as being unpatentable over Voges in view of Behar, in further view of McKinnon. The Examiner reiterates his conclusion on the combination of Voges and Behar, but admits that the combination fails to teach that the controller is programmable from a remote computer or a keypad mounted on an external surface. The Examiner states the McKinnon teaches a common controller for accurately collecting information about a patient's respirator condition. The Examiner concludes that it would have been obvious to modify the controller of Voges/Behar to include the remote computer and keypad to allow entry of the specifics of a treatment plan of a physician.

Applicants respectfully submit that neither Voges/Behar nor McKinnon teach a programmable device configurable to adjust the dispensed ratio of one composition with respect to the other composition. Applicants reiterate the above arguments regarding the Voges/Behar combination. Applicants also reiterate the above arguments regarding the teaching of McKinnon, in particular that McKinnon does not teach that a ratio of compositions dispensed from the inhaler may be controlled via the device.

For all the reasons stated above, it is submitted that Applicants' invention as defined in claims 17, 18 and 37-42 is not anticipated, taught or rendered obvious by Voges in view of Behar, in further view of McKinnon, and patentably defines over the art of record.

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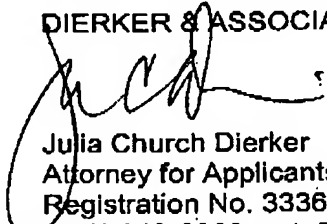
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In summary, claims 1-7, 10-14, 16-25, 27, 30, 32-52 and 54-57 remain in the application. It is submitted that, through this amendment, Applicants' invention as set forth in these claims is now in a condition suitable for allowance.

Further and favorable consideration is requested. If the Examiner believes it would expedite prosecution of the above-identified application, he is cordially invited to contact Applicants' Attorney at the below-listed telephone number.

Respectfully submitted,

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